



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

DEC 16 2011

CERTIFIED MAIL 7010 1060 0002 1705 7861
RETURN RECEIPT REQUESTED

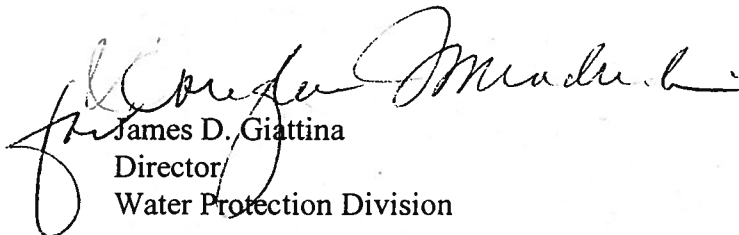
Ms. Coleen H. Sullins
Director, Division of Water Quality
North Carolina Department of Environment
and Natural Resources
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

Re: Administrative Order No. CWA 04-2012-4
National Pollutant Discharge Elimination System Permit No. NCG200339
Biltmore Iron and Metal Company, Incorporated
Asheville, North Carolina

Dear Ms. Sullins:

Pursuant to Sections 308 and 309(a) of the Clean Water Act (CWA), 33 U.S.C. §§ 1318 and 1319(a), I have determined that the above referenced facility is in violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p). As a result, I have issued an Administrative Order (AO), a copy of which is enclosed for your reference. The AO is presently being served. Also enclosed is a copy of the Compliance Stormwater Evaluation Inspection performed at the site.

Sincerely,


James D. Giattina
Director/
Water Protection Division

Enclosure



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DEC 16 2011

CERTIFIED MAIL 7010 1060 0002 1705 7854
RETURN RECEIPT REQUESTED

Ms. Vonna Cloninger
Chief Executive Officer, Biltmore Iron and Metal
Company, Incorporated
One Meadow Road
Asheville, North Carolina 28803

Re: Administrative Order No. CWA 04-2012-4759
National Pollutant Discharge Elimination System Permit No. NCG200339

Dear Ms. Cloninger:

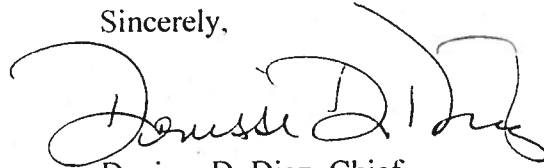
On July 6, 2011, the U.S. Environmental Protection Agency issued Administrative Order (AO) No. CWA 04-2011-4771 to Baltimore Iron and Metal (BIMCO) which is being superseded by copy of this letter by AO No. CWA 04-2012-4759. Pursuant to Sections 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), the Director of the Water Protection Division, EPA Region 4, has determined that BIMCO is in violation of Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p). As a result, the Director has issued the enclosed AO.

This AO does not replace, modify or eliminate any other requirement of the CWA or the Permit. Notwithstanding the issuance of this AO, the EPA retains the right to bring further enforcement action under Sections 309(d) or 309(g) of the CWA, 33 U.S.C. §§ 1319(d) or 1319(g), for the violations cited therein or for any other violation of the CWA. Violations of the CWA, including requirements contained in a National Pollutant Discharge Elimination System (NPDES) permit or an AO issued under Section 309(a) of the CWA, remain subject to a civil penalty of up to \$37,500 per day for each violation, pursuant to Sections 309(d) or 309(g) of the CWA, 33 U.S.C. §§ 1319(d) or 1319(g), as amended by the *Civil Monetary Penalty Inflation Adjustment Rule*, 73 Fed. Reg. 75340 (December 11, 2008). Such violations may also be subject to criminal penalties pursuant to Section 309(c) of the CWA, 33 U.S.C. § 1319(c).

In order to resolve BIMCO's liability for civil penalties, the EPA is offering your company the opportunity to further discuss the violations in the AO. The EPA requests that representatives of BIMCO contact Ms. Susan Pope of my staff at (404) 562-9770 within five (5) days of receipt of this letter to make arrangements for representatives to discuss the violations and the EPA's possible enforcement action. In lieu of appearing in the EPA's office for this meeting, a telephone conference may be scheduled. Representatives should be prepared to provide all relevant information with documentation, pertaining to the above referenced violations including, but not limited to, any financial information which may reflect an ability to pay a penalty. You have the right to be represented by legal counsel. Failure to appear may result in enforcement action against your company.

Should you have any questions concerning the requirements contained in the enclosed AO, please contact Ms. Pope or submit written comments to the address on the letterhead. Legal inquiries should be directed to Mr. Rolando Bascumbe, Associate Regional Counsel at (404) 562-9545.

Sincerely,

A handwritten signature in black ink, appearing to read "Denisse D. Diaz", with a large, stylized flourish at the end.

Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division

Enclosure

cc: Ms. Coleen H. Sullins
Director, Division of Water Quality
North Carolina Department of Environment and Natural Resources

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:) ADMINISTRATIVE ORDER
)
BILTMORE IRON AND METAL CO., INC.)
ASHEVILLE, NORTH CAROLINA) DOCKET NO. CWA-04-2012-4759
)

ADMINISTRATIVE ORDER

I. Statutory Authority

1. Section 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a), provides that, whenever the U.S. Environmental Protection Agency finds that any person is in violation of any condition or limitation which implements, *inter alia*, Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, the EPA may issue an order requiring such person to comply with such condition or limitation, and shall specify a time for compliance that the EPA determines to be reasonable.

2. The following Findings are made and Order issued pursuant to the authority vested in the EPA by Section 309(a) of the CWA, 33 U.S.C. § 1319(a), as amended. This authority has been delegated to the Regional Administrator of EPA, Region 4, and further delegated by the Regional Administrator to the Director of the Water Protection Division, EPA, Region 4.

II. Findings

3. Biltmore Iron and Metal Company, Incorporated ("BIMCO"), is a corporation duly organized and existing under the laws of the State of North Carolina and, therefore, is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, BIMCO owned and/or operated a scrap metal facility located at 1 Meadow Road in Asheville, North Carolina.

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing the EPA or authorized states to administer the NPDES Permit Program,

including the issuance of NPDES permits allowing for the discharge of pollutants, including stormwater, into navigable waters subject to specific terms and conditions. The EPA has granted the State of North Carolina, through the Department of Environment and Natural Resources ("NCDENR"), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. The NCDENR issued *General Permit to Discharge Stormwater Under the National Pollutant Discharge Elimination System*, Permit No. NCG200000 ("Permit") for establishments primarily engaged in assembling, breaking up, sorting and whole trade of scrap metal (Standard Industrial Classification ("SIC") 5093 and areas at scrap metal recycling facilities which are used to process other scrap materials (plastic, paper, glass, rubber and textiles) or used for vehicle maintenance activities, in accordance with North Carolina General Statute 143-215.1 and the CWA. The Permit was effective January 1, 2010, and shall expire on December 31, 2014.

8. The NCDENR Division of Water Quality is responsible for the approval of coverage under the Permit upon receipt of a Notice of Intent ("NOI").

9. On February 11, 2010, BIMCO received coverage under the Permit from NCDENR. The Permit shall expire on December 31, 2014.

10. On July 6, 2011, the EPA issued Administrative Order ("AO") No. CWA 04-2011-4771 to BIMCO requiring compliance with the Permit which included the development of a Stormwater Pollution Prevention Plan ("SWPPP"), institution of an inspection and monitoring program, and a Tier One and Tier Two Evaluation.

11. The EPA and BIMCO had a conference call in September 2011 to discuss the requirements of the Permit and the AO. BIMCO provided elements required by the AO to the EPA via email in November 2011.

12. Part II.A.7 of the Permit requires the SWPPP to be signed by a responsible party and refers to Part III.B.5 of the Permit.

13. Part II.A.8 of the Permit requires inspections of the facility and all stormwater systems as part of the Preventative Maintenance and Good Housekeeping Program on at least a semi-annual schedule; once during the first half of the year (January to June) and once in the second half of the year (July to December), with at least sixty (60) days separating inspection dates (unless performed more frequently than semi-annually).

14. Part II.A.9 of the Permit requires the implementation of the developed SWPPP.

15. Part II.B of the Permit requires analytical monitoring of stormwater discharges at least twice per year via grab samples for pH, Chemical Oxygen Demand ("COD"), Total Suspended Solids ("TSS"), Oil and Grease, Total Recoverable Cadmium, Total Recoverable Copper, Total Recoverable Iron, Total Recoverable Lead, Total Recoverable Zinc and Total

Rainfall. All analytical monitoring shall be performed during a representative storm event at each stormwater discharge outfall and shall not exceed the benchmark values contained in Table 3 of the Permit. Exceedance of the benchmark values require the permittee to increase monitoring, increase management actions, increase recordkeeping, and/or install stormwater BMPs as required in the tiered program contained in the Permit.

15. Part II.C of the Permit requires qualitative monitoring which includes visual inspection of each stormwater outfall regardless of representative status at least twice per year during a representative storm event. If the qualitative monitoring indicates either that the existing stormwater BMPs are ineffective, or that significant stormwater contamination is present, the permittee shall investigate potential courses, evaluate the feasibility of corrective actions, and implement those corrective actions appropriate. A written record of the investigation, evaluation and response actions shall be kept in the SWPPP.

16. Part III.B.5 of the Permit provides signatory requirements which includes, for a corporation, signature by a responsible corporate officer.

17. Part III.C.1 of the Permit requires proper operation and maintenance of all facilities and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures.

18. The EPA has reviewed the SWPPP and Tier 1 and Tier 2 Evaluations submitted by BIMCO and has determined that BIMCO is not in compliance with the Permit as all recommendations contained in the reports have not been instituted. As a result, BIMCO continues to be in violation of Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with the NCDENR Permit.

III. Order

17. Based on the foregoing Findings and pursuant to the authority of Sections 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), IT IS HEREBY ORDERED that BIMCO comply with the following requirements:

- A. Immediately upon receipt of this Order, sign the SWPPP as required by Parts II.A.7 and III.B.5 of the Permit. Within thirty (30) days of the date of receipt of this Order, submit a copy of the signed SWPPP.
- B. Immediately upon receipt of this Order, as required by Part II.A.9 of the Permit, implement elements contained in the SWPPP as follows:

1. Provide containment to the 55-gallon motor oil drum in the maintenance shop;
2. Provide containment to the 275-gallon used oil/fuel/antifreeze drum, 275-gallon used gasoline drum and 150-gallon used oil drum in the automobile fluid reclamation area;
3. Provide containment or drip pans in the fluid reclamation yard;
4. Provide employee training on Spill Prevention and Response procedures;
5. Increase sweeping of concrete and asphalt areas;
6. Conduct monthly inspections of the mobile equipment areas;
7. Ensure that there are no materials stored in stormwater conveyance areas;
8. Evaluate the detention pond for either an increase in capacity or provide for regular sediment removal;
9. Replenish the compacted gravel surface of the ferrous yard roadway
10. Provide vegetative cover to the stormwater ditch on the eastern property boundary and on the detention pond berm and perimeter;
11. Evaluate the feasibility of routing the stormwater ditch discharge to the detention pond; and
12. Institute a monthly inspection program as required by the Oil Contingency Plan of the mobile cranes, crane/shear and trucks with hydraulic lifts.

Within thirty (30) days of receipt of this Order, provide notice, including pictorial evidence, that these elements have been completed. If completion is not possible within thirty (30) days provide a schedule for implementation.

- C. Continue operating an inspection program in accordance with Part II.A.8 of the Permit. The inspection program shall include inspections of the facility and all stormwater systems on at least a semi-annual basis, as part of the Preventative Maintenance and Good Housekeeping Program, with copies of inspections being kept with the SWPPP. Provide copies of these inspections for the first half of 2012 within ten (10) days of completion of the inspection.
- D. Continue operating an analytical monitoring program in accordance with Part II.B of the Permit. Ensure that all parameters

required by the Permit are sampled and the analyses provided on a DMR form as required by the Tier I and Tier II Evaluations. Provide copies of DMRs for the period covering November 2011 through March 2012 within thirty (30) days of completion of the sampling and analysis.

- E. Continue the qualitative monitoring and visual inspection program in accordance with Part II.C of the Permit. Provide copies of qualitative monitoring and visual inspection reports for half of 2012 within ten (10) days of completion.

27. BIMCO may submit a request for any extension of time to comply with the requirements of this Order in writing. Such request must include the reasons for the extension request and a date when compliance will be achieved. Any extension must be approved by the EPA in writing to be effective.

28. All reports, notifications, documentation and submittals required by this Order shall be signed by a duly authorized representative of BIMCO as specified by 40 C.F.R. §§ 122.22(b)(2) and (d) and shall include the following statement:

"I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

29. All reports, notifications, documentation and submittals required by this Order shall be sent by certified mail or its equivalent to the following addresses:

Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division
ATTN: Susan Pope
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and

Coleen H. Sullins
Director, Division of Water Quality
North Carolina Department of Environment and Natural Resources
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

IV. General Provisions

30. Failure to comply with the requirements herein shall constitute a violation of this Order and the CWA, and may subject BIMCO to penalties as provided in Section 309(d) of the CWA, 33 U.S.C. § 1319(d).

31. This Order shall not relieve BIMCO of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any other federal, state or local permit. Compliance with this Order shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

32. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of BIMCO's violation of this Order or of the statutes and regulations upon which this Order is based, or for BIMCO's violation of any other federal or state statute, regulation or permit.

33. Nothing in this Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of BIMCO, or other liability resulting from violations that were not alleged in this Order. The United States does not waive any right to bring an enforcement action against BIMCO for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment or to pursue criminal enforcement.

34. This Order applies to and is binding upon BIMCO and its officers, directors, employees, agents, successors and assigns.

35. Any change in the legal status of BIMCO, including but not limited to any transfer of assets of real or personal property, shall not alter BIMCO's responsibilities under this Order.

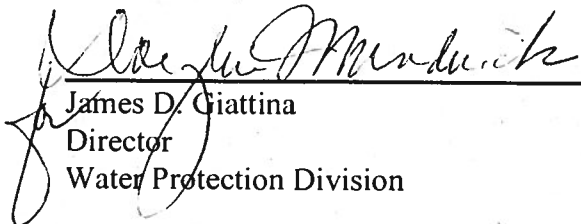
36. Pursuant to Section 309(a)(4) of the CWA, 33 U.S.C. § 1319(a)(4), the EPA has sent a copy of this Order to the State of North Carolina.

37. The provisions of this Order shall be deemed satisfied upon a determination by the EPA that BIMCO has fully completed and implemented the actions required by this Order.

V. Effective Date

38. The effective date of this Order shall be the date upon which it is received by BIMCO.

**IT IS SO ORDERED,
BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:**



James D. Giattina
Director
Water Protection Division

Date: DEC 16 2011

